



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2016-0213, EPA-R04-OAR-2014-0767, EPA-R04-OAR-2014-0426;

FRL-9991-40-Region 4]

### **Air Plan Approval; KY; Minor Sources Infrastructure Requirement for the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of three State Implementation Plan (SIP) submissions, submitted by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ) on April 26, 2013 (two submissions), and February 8, 2016. The submissions address requirements for implementation of the 2012 Fine Particulate Matter (PM<sub>2.5</sub>), 2010 Nitrogen Dioxide (NO<sub>2</sub>), and 2010 Sulfur Dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS). When EPA promulgates a new or revised NAAQS, the Clean Air Act (CAA or Act) requires the state to make a new SIP submission establishing that the existing SIP meets the various applicable requirements or revising the SIP to meet those requirements. This type of SIP submission is commonly referred to as an “infrastructure” SIP. EPA is approving the portions of these infrastructure SIP submissions from Kentucky that relate to the minor source program requirements for the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**DATES:** This rule will be effective [Insert 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established dockets for this action under Docket Identification Nos. EPA-R04-OAR-2016-0213, EPA-R04-OAR-2014-0767, and EPA-R04-OAR-2014-0426. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Notarianni can be reached via electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov) or the telephone number (404) 562-9031.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Under section 110 of the CAA, states are required to have SIPs that provide for the implementation, maintenance, and enforcement of the NAAQS. States are further required to make a SIP submission meeting the applicable requirements of sections 110(a)(1) and (2) within three years of EPA promulgating a new or revised NAAQS.<sup>1</sup> EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. This action pertains to one of the requirements of section 110(a)(2): the minor source requirements of section 110(a)(2)(C). The minor source provisions are one of three components of section 110(a)(2)(C). With respect to the minor source requirements, SIPs must include a program to provide for the enforcement of measures for the state-wide regulation of new and modified minor sources and minor modifications of major sources under the New Source Review (NSR) program.

This action pertains to the section 110(a)(2)(C) minor source requirements for Kentucky’s infrastructure SIP submissions for the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. All other applicable infrastructure requirements for the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS for Kentucky are being or have been addressed in separate rulemakings. On

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<sup>1</sup> See EPA’s May 10, 2017, action proposing to approve other portions of Kentucky’s infrastructure SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS for a discussion of EPA’s general approach to reviewing infrastructure SIP submittals. 82 FR 21751.

April 26, 2013, and February 8, 2016, KDAQ submitted infrastructure SIP submissions to EPA that addressed the minor source element of section 110(a)(2)(C) for the pollutants relevant to the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS, in addition to other infrastructure SIP requirements. KDAQ also provided clarifying information to EPA on December 18, 2017, and May 2, 2018, describing Kentucky's SIP-approved regulations which comprise the basic structural elements of the minor source program in the Commonwealth.<sup>2</sup>

In a notice of proposed rulemaking (NPRM) published on November 5, 2018 (83 FR 55338), EPA proposed to approve the portions of the infrastructure SIP submissions from Kentucky dated February 8, 2016, and April 26, 2013, addressing the minor source requirements of section 110(a)(2)(C) of the CAA for the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. The details of Kentucky's submissions and the rationale for EPA's actions are explained in the NPRM. Comments on the NPRM were due on or before December 5, 2018. EPA received no adverse comments on the proposed action.

## **II. Final Action**

As described above, EPA is approving the portions of the infrastructure SIP submissions from Kentucky dated February 8, 2016, and April 26, 2013, addressing the minor source requirements of section 110(a)(2)(C) of the CAA for the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. EPA is approving the minor source portions of these submissions because they are consistent with section 110 of the CAA.

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<sup>2</sup> Kentucky correspondence to EPA dated December 18, 2017, and May 2, 2018, are in each of the dockets for this action under "Proposed Rule-2."

### **III. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements,  
Particulate matter, Sulfur dioxide.

Dated: March 18, 2019.

Mary S. Walker

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

**PART 52- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart S — Kentucky**

2. Section 52.920(e), is amended by adding new entries for: “110(a)(1) and (2) Infrastructure Requirements for the 2010 NO<sub>2</sub> NAAQS”; “110(a)(1) and (2) Infrastructure Requirements for the 2010 SO<sub>2</sub> NAAQS”; and “110(a)(1) and (2) Infrastructure Requirements for the 2012 PM<sub>2.5</sub> NAAQS” at the end of the table to read as follows:

**§ 52.920 Identification of plan.**

\* \* \* \*

(e) \* \* \*

**EPA-Approved Kentucky Non-Regulatory Provisions**

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
		**	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2010 NO <sub>2</sub> NAAQS	Kentucky	4/26/2013	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication].	Only addresses the minor source program requirements of section 110(a)(2)(C).
110(a)(1) and (2) Infrastructure Requirements for the 2010 SO <sub>2</sub> NAAQS	Kentucky	04/26/2013	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication].	Only addresses the minor source program requirements of section 110(a)(2)(C).

110(a)(1) and (2) Infrastructure Requirements for the 2012 PM <sub>2.5</sub> NAAQS	Kentucky	2/8/2016	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication].	Only addresses the minor source program requirements of section 110(a)(2)(C).
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[FR Doc. 2019-05881 Filed: 3/27/2019 8:45 am; Publication Date: 3/28/2019]